HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1125 of 2006
AND
W.A.V.M.P.No.2482 of 2006 in W.A.M.P.No.2354 of 2006

Writ Appeal No.1125 of 2006

Between:

K.Siva Sai Kumar Reddy … Appellant

AND

Principal, Vagdevi Institute of Technology & Science, Peddasetipalli Village, Proddatur Mandal, Kadapa District and another. …. Respondents.

W.A.V.M.P.No.2482 of 2006

Between:

Jawaharlal Nehru Technological University, Hyderabad, represented by its Registrar. …. Applicant/ Respondent No.2

AND

1. K.Siva Sai Kumar Reddy …. Respondent/ Appellant.

2. Principal, Vagdevi Institute of Technology & Science, Peddasetipalli Village, Proddatur Mandal, Kadapa District. …. Respondent/ Respondent.

::JUDGMENT::

Counsel for the appellant : Smt. T.Leelavathi.

Counsel for respondent No.1 : None.

Counsel for respondent No.2 : Shri K. Rathanga Pani Reddy, Standing Counsel for Jawaharlal Nehru Technological University

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November 16, 2006

Per G.S. Singhvi, CJ

Although the matter has been listed today for consideration of W.A.V.M.P.No.2482 of 2006 filed by Jawaharlal Nehru Technological University (for short, 'the University) for vacating interim order dated 27-10-2006 passed in W.A.M.P.No.2354 of 2006, learned counsel for the parties agree that the main appeal may be disposed of.

In the appeal, the appellant has questioned the correctness of order dated 23-10-2006 passed by the learned Single Judge in Writ Petition No.21929 of 2006, whereby he declined the appellant's prayer for issue of a direction to the respondents to allow him to take examination of 1st Semester of 4th year B.Tech.

A perusal of the record shows that after passing Intermediate from Deepti Junior College, Proddatur, the appellant took admission in B.Tech. course in Vagdevi Institute of Technology and Science, Peddasettipalli (for short, 'the College'), which is affiliated to the University. While he was in 4th year, the appellant met with an accident and, on that account, he is said to have been prevented from attending the classes. In October, 2006, he submitted examination form, but the same was not accepted by the College authorities on the

premise that he has not put in minimum 75% attendance as required by Regulation 5 of the Academic Regulations. He than invoked the jurisdiction of this Court under Article 226 of the Constitution of India and prayed for issue of a mandamus to the respondents to allow him to take the examination. The learned Single Judge dismissed the writ petition by observing that the Court cannot compel the educational institutions to allow a student to take examination, who does not have the requisite percentage of attendance.

We have heard learned counsel for the parties and perused the record. Regulation 5 of the Academic Regulations framed by the University, which has bearing on the decision of this appeal reads as under:

"**5. Attendance.**

i) a student has to put in a minimum of 75% of attendance in aggregate of all the subjects for acquiring credits in the I year and/or each semester thereafter.

ii) Condonation of shortage of attendance in aggregate up to 10% (65% and above and below 75%) in each semester or I year may be granted by the college academic committee.

iii) A student will not be promoted to the next semester unless he satisfies the attendance requirement of the present semester/I year.

Note:

a) Shortage of attendance below 65% in aggregate shall in no case be condoned.

b) Student whose shortage of attendance is not condoned in any semester/I year are not eligible to take their end examination of that class and their registration shall stand cancelled. They may seek re-admission for that semester/ I year when offered next.

c) Condonation of shortage of attendance as stipulated in 5 (ii) above shall be granted on genuine and valid grounds with supporting evidence.

d) A stipulated fee shall be payable towards condonation of shortage of attendance. "

The above reproduced regulation was interpreted by the Division

Bench in **M.S. Chakravarthi v. Principal, Sri Kalahasteeswara Institute of Technology**[1]. After noticing the judgment of the Supreme Court in **Ashok Kumar Thakur v. University of Himachal Pradesh**[2], the Division Bench held:

> "Since nobody has power to condone the attendance below 65% therefore, it should be assumed that even this Court cannot order such a condonation. Something which is prohibited by the Regulations cannot be subject-matter of a mandamus."

In **Ashok Kumar Thakur** (supra), the Supreme Court unequivocally rejected the plea of sympathy and held:

> "Considering that this case concerns the career of a young student we tried to look at the matter with all possible sympathy and consideration but we do not see how we can direct or compel an authority to do something which is beyond its legal competence to do. Since the principal is the only authority who can condone and since it was beyond his competence to condone the shortage in question, we do not see how we can intervene in favour of the petitioner even if the petitioner had succeeded in making out a case for condonation. In our opinion, the appeal must fail on this short point. Much as we regret the unfortunate fact that the petitioner is going to lose almost two precious years of his academic life we are in law bound to confirm the decision of the High Court, and dismiss the petitioner's appeal. We, therefore, do so. In the circumstances of this case, however, we are making no order as to costs. "

In view of the aforementioned judgments, it must be held that the Court cannot issue a judicial fiat to the respondents to admit the appellant in I semester examination of the 4th year and thereby violate the mandate of Regulation 5 of the Academic Regulations.

We are further of the view that even if the benefit of Regulation 5 (ii) was to be extended to the appellant, he would not have been able to achieve the requirement of minimum 75% attendance in aggregate. Therefore, the learned Single Judge did not commit any error by refusing to entertain his prayer and we do not see any reason to differ

with him.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, W.A.V.M.P.No.2482 of 2006 filed on behalf of the University for vacating the interim order is disposed of as infructuous and W.A.M.P.No.2354 of 2006 is dismissed. Interim order dated 27-10-2006 shall stand automatically vacated.

G.S. SINGHVI, C.J.

16th November, 2006.

C.V. NAGARJUNA REDDY, J.

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[1] 2005 (1) ALD 253

[2] (1973) 2 SCC 298